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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA**

TERESA HENDERSON, *et al.*,

Plaintiffs,

v.

FREEDOM MORTGAGE  
CORPORATION,

Defendant.

Case No.:  
(Removed from State of North Carolina, Gaston  
County, Superior Court Division, Case No. 20  
CVS 941)

**DEFENDANT'S NOTICE OF REMOVAL  
TO FEDERAL COURT UNDER  
28 U.S.C. § 1441(B) (DIVERSITY)**

**NOTICE OF REMOVAL**

TO: THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NORTH CAROLINA.

PLEASE TAKE NOTICE that Defendant Freedom Mortgage Corporation ("Freedom"), by its counsel, without waiving the right to assert any defenses, files this Notice of Removal ("Notice") of the state court action entitled *Teresa and Derrick Henderson vs. Freedom Mortgage Corporation*, No. 20 CVS 941, from the Superior Court of Gaston County, North Carolina, to the United States District Court for the Western District of North Carolina, consistent with 28 U.S.C. §§ 1332, 1441, and 1446. In support of removal, Freedom respectfully states as follows:

1. On or about March 4, 2020, Plaintiffs Teresa and Derrick Henderson ("Plaintiffs") filed a Complaint for declaratory judgment, violation of the North Carolina Unfair Trade Practices

Act, and equitable and injunctive relief in the Superior Court of Gaston County, North Carolina (“State Court Action”). A true and correct copy of the Complaint in the State Court Action is attached to this Notice as **Exhibit A**.

2. As explained here, this Court has original subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1332, and the action may be removed to this Court under 28 U.S.C. § 1441 because: (i) there is complete diversity of citizenship between Plaintiffs and Defendant, and (ii) the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

### **DIVERSITY OF CITIZENSHIP**

3. Based on Plaintiffs’ Complaint, Defendant Freedom believes that Plaintiff Teresa Henderson and Derrick Henderson are citizens of the State of North Carolina. (Complaint ¶ 1).

4. Under the Supreme Court’s ruling in *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1185-86 (2010), a corporation is a citizen of both the state in which it is incorporated and the state in which it has its principal place of business, as determined by the “nerve center” test.

5. Freedom is a corporation, incorporated in the state of New Jersey with its principal place of business in New Jersey. Therefore, because New Jersey is both Freedom’s state of incorporation and the location of its principal place of business, Freedom is solely a citizen of New Jersey.

6. Accordingly, there exists complete diversity among the parties because Plaintiffs are citizens of North Carolina and Defendant is a citizen of New Jersey.

### **AMOUNT IN CONTROVERSY**

7. The second element required for this Court’s exercise of diversity jurisdiction in this case is that the amount in controversy must exceed \$75,000.00. 28 U.S.C. § 1332.

8. Plaintiffs pray the court enter a “declaratory judgment as to the violations of N.C.G.S. 75-1, et. seq., and for judgment against Freedom for all damages Plaintiffs have incurred, **that amount to be trebled**, together with... reasonable attorneys’ fees added as provided by N.C.G.S. §§ 75-16 and 75-16.1.” (Complaint ¶ 27) (Emphasis added.).

9. Plaintiffs further pray for an amount “exceeding \$10,000 for damages that have resulted from the violations of N.C.G.S. § 75-16 (Complaint “Prayer for Relief” clause, page 5; See also Complaint ¶¶ 27).

10. Freedom denies all of Plaintiffs’ allegations and disputes that Plaintiffs are entitled to any relief. Without prejudice to its defenses in this action, however, Freedom stipulates that based on the face of the Complaint, the amount in controversy exceeds the \$75,000.00 threshold, exclusive of interest and costs, for removal under 28 U.S.C. § 1332(a).

11. Since there exists complete diversity among the parties, and the amount in controversy exceeds the threshold for purposes of diversity jurisdiction, this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

#### **OTHER PROVISIONS**

12. This removal is timely. Freedom files this Notice of Removal within 30 days of May 11, 2020, the date of service of the summons and Complaint on Freedom, as required by 28 U.S.C. § 1446(b).<sup>1</sup>

13. The United States District Court for the Western District of North Carolina, is the federal judicial district encompassing the Superior Court of Gaston County, North Carolina, where this action is filed, such that this is the proper federal district for removal of this case to federal court. 28 U.S.C. § 1441(a); 28 U.S.C. § 90(a)(2).

14. A copy of all process, pleadings, and orders that have been served on Freedom is attached as **Exhibit A** to this Notice of Removal under 28 U.S.C. § 1446(a).

15. Consistent with 28 U.S.C. § 1446(d), Freedom will promptly file a copy of this Notice of Removal with the Superior Court of Gaston County, North Carolina, and will serve a copy of same upon Plaintiffs. A copy of the notice to be filed with the Superior Court of Gaston County is attached hereto as **Exhibit B**.

16. A Notice of Consent is not required since Freedom is the only Defendant.

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<sup>1</sup> Freedom has ordered proof of service from the Gaston County Clerk of Courts, and will supplement the same upon receipt.

17. By filing this Notice of Removal, Freedom does not waive any jurisdictional or other defenses that might be available to it.

18. No previous application has been made for the relief requested in this Notice.

19. Freedom reserves the right to amend or supplement this Notice of Removal.

WHEREFORE, Freedom removes this action, now pending in the Gaston County Superior Court for the State of North Carolina, to the United States District Court for the Western District of North Carolina, consistent with 28 U.S.C. §§ 1332, 1441, and 1446, and states that no further proceedings may be had in the state action. If any question arises as to the propriety of the removal of this action, Freedom respectfully requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

Respectfully submitted,

Dated: June 9, 2020

DINSMORE & SHOHL LLP

By: s/ Kelly E. Eisenlohr-Moul

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### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served via electronic mail on this 9<sup>th</sup> day of June, 2020:

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/s/ Kelly E. Eisenlohr-Moul

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